

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
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In the Matter of	)	
	)	
Implementation of Section 309(j)	)	PP Docket No. <u>93-253</u> /
of the Communications Act --	)	
Competitive Bidding	)	
Narrowband PCS	)	
	)	
and	)	
	)	
Amendment of the Commission's	)	GEN Docket No. 90-314
Rules To Establish New Narrowband	)	ET Docket No. 92-100
Personal Communications Services	)	

**COMMENTS OF THE PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION**

The Personal Communications Industry Association ("PCIA") herewith submits its comments in response to the Commission's *Third Memorandum Opinion and Order and Further Notice of Proposed Rulemaking* in the above-captioned dockets.<sup>1</sup> In the *Further Notice*, the Commission proposes structural changes to the narrowband PCS allocations and alterations to the competitive bidding rules, in large part to increase representation of the designated entities among narrowband PCS licensees. As discussed below, PCIA believes that some limited and carefully tailored revisions to the existing framework would better serve the Commission's goals, but that radical changes are not warranted or necessary.

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<sup>1</sup> Implementation of Section 309(j) of the Communications Act -- Competitive Bidding for Narrowband PCS, PP Docket No. 93-253, and Amendment of the Commission's Rules To Establish New Narrowband Personal Communications Services, GEN Docket No. 90-314, ET Docket No. 92-100 (Aug. 17, 1994) [*"Further Notice"*].

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**I. THE NATIONWIDE PCS AUCTIONS WERE NOT A REASONABLE BENCHMARK FOR MEASURING THE EFFICACY OF THE COMMISSION'S PREFERENTIAL BIDDING POLICIES FOR DESIGNATED ENTITIES**

The Commission and the industry have always recognized that the process of implementing competitive bidding procedures for the licensing of radio spectrum must be evolutionary as experience is gained in the conduct of the auctions. Accordingly, it is entirely appropriate to reexamine the competitive bidding scheme adopted for narrowband PCS licenses generally in light of the recent nationwide narrowband PCS auctions. However, radical rule revisions at this stage are neither necessary nor appropriate. As discussed below, while an objective evaluation of the recent auctions may reveal some flaws in the original competitive bidding framework, these problems can be addressed by narrowly tailored relief that does not upset the industry's legitimate reliance on the basic rule provisions as adopted.

On July 24, 1994, the Commission began the first ever auctions of radio spectrum. As noted in the *Further Notice*, 29 firms registered to participate in these auctions, 9 of which indicated they were entitled to classification as a "designated entity" under the Commission's rules. Because none of the winners in the nationwide auction were "designated entities," the Commission is now considering whether further measures to assure participation by designated entities would be justified. PCIA believes it is inappropriate, however, to use the nationwide narrowband PCS auctions as a benchmark by which to judge the entire narrowband PCS service.

As demonstrated by the fact that the lowest amount paid for any nationwide spectrum block was \$37M, the acquisition of nationwide spectrum is expensive and build-out costs are

potentially even greater. Thus, nationwide narrowband PCS may *never* have been a viable and realistic business opportunity for capital-constrained designated entities. On the other hand, more modestly sized MTA-based narrowband systems offer feasible entry opportunities and lucrative business potential for designated entities, especially when the cost of acquiring spectrum can be spread over installments, which were not available to nationwide narrowband designated entity applicants.

For example, based upon the bidder data released by the Commission, 4 of the 25 companies that actually participated in the nationwide auction placed bids only in the first round and only on licenses where designated entity preferences would apply. These entities bid between \$0.5M and \$0.525M for the 50 kHz paired channels designated N-5 and between \$0.3M and \$0.31M for the 50 kHz/12.5 kHz paired channel designated N-8. Presumably, these entities were designated entity bidders, and, obviously, none of them had sufficient capital devoted to spectrum acquisition to afford to meet the high bid of \$20M for N-5 or even the high bid of \$6.25M for N-8. In other words, their spectrum acquisition resources were tapped out when the licenses in question were at roughly 25 percent of the final value.

As a trade association comprised mainly of small carriers in an industry built by small carriers, PCIA is a great proponent of diversity and well understands the great benefits in competition and innovation that smaller carriers can provide. While initial market entry by first-time small carriers at the nationwide level may not now be a realistic prospect, there are more reasonable entry opportunities in the over 1,300 narrowband PCS licenses still available under the Commission's current allocation scheme. As noted, the nationwide auction

experience would appear to be a poor indicator of the likely success of designated entities in the other more realistically sized service areas. Consequently, instead of overreacting through radical redefinitions of the designated entity rules, PCIA suggests below means of better tailoring the market opportunities to encourage designated entity participation on a meaningful basis.

## **II. THE COMMISSION SHOULD ADOPT TARGETED AUCTION REFORMS DESIGNED TO CREATE REALISTIC AND VIABLE ENTRY OPPORTUNITIES FOR CAPITAL-CONSTRAINED DESIGNATED ENTITIES**

The *Further Notice* suggests a number of potential reforms for increasing designated entity participation in narrowband PCS. These proposed reforms include:

- Expanding the definition of "small business" to include those entities with up to \$40 million in gross revenues;
- Adopting a "control group" option that would allow greater opportunities for designated entities to partner with passive investors;
- Increasing the bidding credit from 25 percent to 40 percent for women- and minority-owned small businesses when competing in auctions with non-designated entities for regional authorizations;
- Reserving four MTA frequency blocks (19, 21, 22, and 24) and two BTA frequency blocks (25 and 26) for entrepreneurs, *i.e.*, companies with annual gross revenues of less than \$125M and total assets of less than \$500M;
- Reclassifying the two BTA licenses as regional (or even national) authorizations; and
- Reducing the upfront payments from \$0.02/MHz/POP to \$0.015/MHz/POP for designated entities.

As discussed below, while PCIA believes that some of these changes are justified and in the public interest, a more narrowly tailored solution would better address the fundamental problems facing designated entities.

**A. An Expanded Small Business or Entrepreneurial Block Definition Would Not Accomplish Its Intended Objectives**

The Commission should not adopt an "entrepreneurs' block" in narrowband with eligibility to bid reserved to companies as large as \$125M in annual gross revenues and total assets as large as \$500M. While such an action may increase the representation of "designated entities" among the auction winners, it is so broadly written a standard as to encompass all but a few members of today's paging industry within the scope of "designated entities." As a result, the prices paid at auction for narrowband PCS licenses will simply be inflated by the percentage bidding credit granted to small businesses, and new entrants with marginal revenues will not have an increased opportunity to participate in new PCS spectrum opportunities.

Similarly, the creation of an entrepreneurial block defined in terms bigger than the small business definition also would accomplish little in facilitating new entrant opportunities. The eligible class would be so large as to defeat the Commission's objectives. Consequently, the change would be self-defeating.

**B. The Commission Should Increase Opportunities for Partnering Between Designated Entities and Established Carriers**

The current designated entity rules unnecessarily constrain the ability of small businesses, women and minorities to secure partnering with established carriers that possess essential resources and experience in the field. The combination of the Commission's attribution, affiliation, and investment rules create enormous complexity and even disincentives to the forming of relationships that would facilitate the success of designated entities. In particular, the Commission should carefully reassess its current limitations on the maximum permissible voting right of investors in designated entities and the minimum equity positions required of designated entities. In addition, the Commission should promptly confirm that reasonable policies will apply to management agreements, resale operations, and joint marketing between industry incumbents and designated entities.

**C. Any Entrepreneurial Block Allocations Should Be Confined to Channels 25 & 26 With Licenses Issued for Major Trading Areas**

As discussed above, the nationwide narrowband PCS results do not provide a sound basis for concluding that special entrepreneurial block set asides are necessary for designated entities. However, if the Commission nonetheless concludes that such actions are warranted, PCIA believes that Channels 25 & 26 would be the appropriate homes for such allocations. Furthermore, PCIA believes that Major Trading Areas would afford the appropriate size service areas for designated entities. The current Basic Trading Areas do not provide the optimum combination of coverage and construction costs for new entrants to be competitive in the messaging business and would burden designated entities with the additional

complexity and transaction costs of aggregating licenses to achieve the minimum service area needed for a viable, messaging operation. Moreover, as noted below, establishing a service area that is too large would result in too few licensing opportunities for designated entities and potentially impose build-out requirements and infrastructure costs beyond that which the group intended to benefit from these policies are able to sustain. Nor should the Commission consider any set asides of 12.5 kHz talk back channels that have no stand alone value.

**D. The Commission Should Not Retroactively Create New Nationwide Narrowband PCS Allocations**

The *Further Notice* suggests that the options for creating entrepreneurial blocks might include new nationwide narrowband PCS licenses. This possibility should be summarily rejected for several basic reasons. First, if Channels 25 & 26 are reserved for designated entities, the creation of nationwide licenses would limit potential designated entity entry to just two opportunities rather than the nearly 100 to 1,000 opportunities afforded by use of Major Trading Areas or Basic Trading Areas. Second, the costs of obtaining nationwide spectrum and deploying nationwide service are not well matched to the resources available to designated entities. Third, a retroactive establishment of additional nationwide licenses would be fundamentally inequitable and potentially illegal given the reliance of the winning nationwide bidders on the established allocation plan when they committed over half a billion dollars to spectrum auction payments. To retroactively alter the basic framework for the nationwide narrowband PCS industry in that fashion would so undermine the Commission's credibility and the winning bidders' good faith investments that any such proposals should be summarily rejected.

**E. There Is No Reason to Alter the Transfer Rules for Designated Entities**

Finally, the *Further Notice* invites comment on proposals to increase the minimum holding periods before designated entities are permitted to sell or assign their PCS interests. While PCIA has been a strong advocate of anti-trafficking rules and safeguards against abuses of the designated entity policies, there is no basis for extending the periods set forth in the *Second Report and Order*. The Commission has already established sufficiently sound limitations to curb misuses.

**III. CONCLUSION**

In view of the foregoing, PCIA believes that the Commission should promote opportunities for designated entities to partner with established carriers; rely upon Major Trading Areas rather than smaller Basic Trading Areas as the optimum service area for designated entities; and, maintain the current holding periods applicable to designated entities. Furthermore, PCIA strenuously opposes any possibility that the Commission might retroactively create additional nationwide narrowband PCS licenses given the reliance of the



industry and the winning bidders upon the established industry structure in making their business decisions and committing millions of dollars to auctioned spectrum.

Respectfully submitted,

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